S.B. Civil First Appeal No. 56/1986

State of Rajasthan & Another V/s M/s Pitaliya & Sons

Date of Order: 07.04.2006

HON'BLE MR. K.C.SHARMA, J.

Mr. M.L.Goyal, Dy. Govt. Advocate for the appellants
Mr. Rinesh Gupta for the plaintiff respondent

This regular First Appeal under Sec. 96 CPC by the State of Rajasthan arises out of the judgment and decree dated 23.12.1985 passed by the learned Additional District, Deeg, by which the learned Judge has decreed the suit of the plaintiff respondent.

I have heard learned counsel for the parties and gone through the impugned judgment.

The appellants invited tenders for supply of petrolium products. The plaintiff's tender rate being lowest one was accepted. The short controversy involves in the appeal is whether the plaintiff is entitled to get decreetal amount of Rs. 7875/-with interest on account of increase in the price of sealing compound. From the judgment

impugned in this appeal it appears that while submitting tender, the plaintiff specifically put a condition that he would be entitled to receive payment in terms of increased rates, in the event of there being rise in the price of above items by the Government. Ex.P.7 dated 7.6.80 is the supply order, while Ex.P11 is the revised order to supply the petrolium products. Admittedly there is no condition about payment on the basis of average increased rate either in the order order of supply or in the revised order. However, there is no evidence on record to show that the condition put by the plaintiff in the tender itself was ever withdrawn at any point of time. It is further evident that even before the revised order dated 8.12.80, Ex.P11 could be issued, the plaintiff had wrote a letter Ex.P8 to the defendant appellant informing the defendants in specific terms that the Government has increased the prices of petrolium products to the extent of 30-40%, about which he does not have the complete knowledge and that the

aforesaid increase in the price has to be realised and the rates given by the defendant are attached to the condition about increase in the price. The learned trial court, on consideration of evidence both ocular and documentary has come to a definite conclusion that the rates negotiated on 6.5.1980 cannot over ride the terms and conditions of the tender.

From what has been stated herein above, it must be concluded that the judgment under challenge is based on proper appreciation of evidence, both ocular and documentary and the learned trial court has rightly decreed the suit of the plaintiff. The judgment and decree impugned in this appeal, therefore, calls for no interference.

Resultantly, this appeal fails and is dismissed as being devoid of any merit.

(Khem Chand Sharma), J.

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